

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

If you own a “Flame Lock” or “Flame Guard” water heater, you may be entitled to benefits under this Settlement. Please read this notice carefully, as it affects your legal rights.

A Federal Court authorized this notice. This is not a solicitation from a lawyer.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
PARTICIPATE IN THE SETTLEMENT	No action is required if you wish to participate in the Settlement.
EXCLUDE YOURSELF	You will be unable to participate in the Settlement if you choose this option. This is the only option that allows you to retain any rights you may have to pursue the legal claims in this case.
OBJECT OR COMMENT	Write the Court by the August 10, 2007 deadline about why you do, or do not, like the Settlement.
ATTEND THE HEARING	Ask to speak to the Court about the fairness of the Settlement.

1. **THE LAWSUIT:** On November 10, 2005, an action entitled *Dawn Bowen v. Whirlpool Corporation*, Case No. CV05-8067 AG (JWJx), was filed in the United States District Court for the Central District of California, in Santa Ana. On June 28, 2006, a similar action was filed in the United States District Court for the Central District of Illinois. Both cases are being resolved by this settlement. The current complaint alleges that certain “Flame Lock” and “Flame Guard” water heaters, most of which were sold at Lowe’s retail outlets nationwide and other stores, are defective in that their single-use thermal cutoff switches are prone to premature tripping, requiring replacement of the thermocouple, with many consumers reporting they had to replace the thermocouple. The defendants in the lawsuit are Whirlpool Corporation (whose brand is on “Flame Lock” heaters); Lowe’s HIW, Inc. and American Water Heater Company (manufacturer of the “Flame Lock” and “Flame Guard” water heaters). Plaintiffs assert claims, on behalf of people who bought the water heaters, under the California unfair-competition law, the California Consumers Legal Remedies Act, the Magnuson-Moss Warranty Act, and the Illinois Consumer Fraud and Deceptive Business Practices Act, and consumer protection laws of other states and the District of Columbia, and for unjust enrichment.

2. **DEFENDANTS’ POSITION:** Defendants deny all allegations of wrongdoing asserted in the lawsuit, deny that the water heaters are defective, and deny that they are liable to any buyer of the water heaters on any claim asserted or which could be asserted in the Litigation.

3. **NOTICE:** This notice is designed to inform members of the class defined below of the pendency of this lawsuit and of the proposed Settlement and to describe the rights and options you have if you fall within the class definition.

4. **CLASS:** The following class has been conditionally certified for purposes of the Settlement: All persons in the United States of America, its territories, and the District of Columbia who are original purchasers of a “Flame Lock” or “Flame Guard” water heater manufactured by American

Water Heater Company, equipped with a single-use thermocouple, and purchased during the period from 2000 through 2006.

Excluded from the Class are (a) all federal court judges who have presided over this case and their spouses and anyone within three degrees of consanguinity from those judges and their spouses; (b) all persons who validly and timely request exclusion from the Class; and (c) all persons who have previously executed and delivered to a Settling Defendant a release of their claims arising from failure of the thermocouple in their water heater (except that such persons remain class members for purposes of any other included water heater they bought new and for which they have provided no such release, unless they timely and validly request exclusion from the class).

The Court has appointed the following lawyers as Co-Lead Class Counsel to represent the class:

Eric H. Gibbs
Girard Gibbs LLP
601 California Street, Suite 1400
San Francisco, California 94108

Richard J. Doherty
Horwitz, Horwitz & Associates Ltd.
25 E. Washington Street, Suite 900
Chicago, Illinois 60602

5. **SETTLEMENT BENEFITS.** The defendants in this case, along with A.O. Smith Corporation (which owns American Water Heater Company), have agreed to settle the case by providing the following benefits to the class.

a. Upgrade for water heaters. Class members who still own their “Flame Lock” or “Flame Guard” water heater will be entitled to a manifold door assembly with resettable thermal cutoff switch for their water heater. If you make a valid claim for this upgrade, you will not be charged for the component; you will be limited to paying only the actual shipping cost. You must arrange and pay for the installation yourself. If you still own the water heater and previously paid for a manifold door assembly with a resettable thermal cutoff switch, you are entitled to reimbursement of the amount you paid for the upgrade itself, if any. You are not entitled to shipping costs or labor costs associated with the installation of the upgrade.

To obtain the free upgraded manifold door assembly or reimbursement of the amount you previously paid for the manifold door assembly, please complete the accompanying claim form and mail it to the address on the form no later than the specified deadline.

b. Reimbursement for thermocouple replacement. Class members who bought one or more replacement thermocouples for their water heater before receiving this notice will be entitled to reimbursement from a \$1 million fund. If you make a valid claim for reimbursement, you will be sent a payment of \$15 for each replacement thermocouple you bought, up to a maximum of \$30 (*i.e.*, reimbursement for two thermocouples). If you experienced more than three thermocouple failures and then replaced your water heater, you will be sent \$150 if you make a valid claim accompanied by documentation showing your purchase of the original water heater, the thermocouple failures, and your purchase of the replacement water heater.

To obtain a reimbursement payment from the common fund, please complete the accompanying claim form appropriately and mail it to the address on the form no later than the specified deadline.

(If the common fund is insufficient to reimburse all class members who submit valid claims in the above amounts, then each class member's payment will be reduced proportionately.)

c. Educational literature. All Claimants will be sent educational literature explaining the importance of proper water heater installation and maintenance.

6. **ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS:** Class Counsel have pursued the lawsuit on a contingent basis and have not received any compensation for their services or reimbursement of their out-of-pocket expenses. As part of the Settlement, subject to Court approval, Class Counsel will apply for an award of attorneys' fees and expenses in an amount not to exceed \$2.235 million. Class Counsel will also ask the Court to approve a \$5,000 incentive award to named plaintiff Dawn Bowen and a \$2,500 incentive award to named plaintiff Amy Faught. Any fee, expense, or incentive awards will be paid separately from and will not reduce the class benefits described above.

7. **RESULT IF COURT APPROVES SETTLEMENT:** If the Court approves the proposed Settlement, it will enter a judgment that will dismiss the lawsuit with prejudice on the merits as to all class members. This means that all class members will be barred from bringing their own lawsuits or claims based on allegations that a "Flame Lock" or "Flame Guard" water heater made by American Water Heater Company, equipped with a single-use thermocouple, and bought at any time from 2000 through 2006, has a defect that renders it prone to premature or frequent thermocouple failure. People who meet the class definition and do not want to be barred from bringing such lawsuits or claims must validly and timely request exclusion from the class, as described below.

8. **YOUR OPTIONS AND DEADLINES:** If you fall within the class definition, you have the following options:

- (a) **PARTICIPATE IN THE SETTLEMENT:** If you wish to obtain the manifold door assembly with resettable thermal cutoff switch, reimbursement for your previous purchase of the component, and/or reimbursement for your purchase of a replacement water heater, *you must complete and mail the accompanying claim form to the address and by the deadline specified on the form.*
- (b) **COMMENT IN FAVOR OF THE SETTLEMENT:** If you believe the Court should approve the Settlement, you may send a letter or postcard in support of the Settlement to Eric H. Gibbs, Girard Gibbs LLP, 601 California Street, Suite 1400, San Francisco, California 94108.
- (c) **REQUEST TO BE EXCLUDED:** If you wish to be excluded from the class and Settlement, you must send a letter or postcard, postmarked no later than August 10, 2007, stating your full name, address, and telephone number, and stating that you wish to be excluded from the class in *Bowen v. Whirlpool Corporation*. You must mail your request to: Claims Administrator, Bowen, et al. v. Whirlpool Corp., et al., P.O. Box 9147, Dublin, OH 43017-4147. Failure to include the required information or submit your request for exclusion on time will result in your remaining a class member and being bound by the Settlement and final judgment dismissing the case and releasing class members' claims. If you validly and timely request exclusion from the class, you will not be bound by the Settlement or final judgment, and you will not be barred from pursuing any individual claim you may otherwise have relating to the subject matter of the lawsuit.

- (d) **OBJECT:** If you do not exclude yourself from the class, you may object to the Settlement. You may also, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your own attorneys' fees and costs. If you object and the Settlement is approved, you will be barred from bringing your own individual lawsuit asserting claims relating to the subject matter of the lawsuit, and you will be bound by the Settlement, final judgment, release of claims, and all orders entered by the Court. To object to the Settlement, you must, on or before August 10, 2007, (1) file with the Clerk of the United States District Court for the Central District of California, Southern Division, 411 West Fourth Street, Santa Ana, California 92701; and (2) send to Eric H. Gibbs, Girard Gibbs LLP, 601 California Street, Suite 1400, San Francisco, California 94108, and Ginger M. Busby, Burr & Forman, LLP, 420 North 20th Street, Suite 3100, Birmingham, Alabama 35203, a written objection that includes (a) a reference at the beginning to *Bowen v. Whirlpool Corporation*, Case No. CV05-8067 AG (JWJx) (C.D. Cal.); (b) your full name, address, and telephone number; (c) the serial number of your water heater; (d) a written statement of all grounds for your objection, accompanied by any legal support for such objection; (e) copies of any papers, briefs, or other documents upon which your objection is based; (f) a list of all persons who will be called to testify in support of your objection; and (g) a statement of whether you intend to appear at the fairness hearing (described below). If you intend to appear at the fairness hearing through counsel, your objection must also state the identity of all attorneys representing you who will appear at the fairness hearing. If you do not file a timely written objection to the Settlement, you will be barred from seeking any adjudication or review of the Settlement by appeal or otherwise, and if you do not file a notice of intent to appear at the fairness hearing, you will be foreclosed from speaking at the hearing.

9. **FAIRNESS HEARING:** On September 10, 2007, at 1:30 p.m., a hearing will be held before the Honorable Andrew J. Guilford, in Courtroom 10D of the United States District Court for the Central District of California, Southern Division, 411 West Fourth Street, Santa Ana, California 92701, to decide whether the proposed Settlement is fair, reasonable, and adequate and should be approved and, if so, to determine what amount of attorneys' fees and expenses should be awarded to plaintiffs' counsel. The time and date of this hearing may be continued or adjourned without further notice.

10. **ADDITIONAL INFORMATION:** For additional Settlement information you may contact the Claims Administrator by (a) calling the Toll Free Number listed at the bottom of the page, or (b) visiting website listed at the bottom of the page. Additional requests for information from Class Counsel should be sent via mail to Eric H. Gibbs, Girard Gibbs LLP, 601 California Street, Suite 1400, San Francisco, California 94108. **Please do not direct inquiries to the Court. Please do not call the 1-800 number on your water heater.**

Dated: May 14, 2007

BY ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA